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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,844	02/10/2004	Charles Zdzislaw Loboz	624-L	1643

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UNISYS Corporation  
MS/E8-114  
Unisys Way  
Blue Bell, PA 19424-0001

EXAMINER
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LAU, TUNG S

ART UNIT	PAPER NUMBER
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2863

DATE MAILED: 10/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/775,844

Applicant(s)

LOBOZ ET AL.

Examiner

Tung S. Lau

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2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3, 4 and 9 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5-8 and 10-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### **Amendment – Specification and Abstract**

1. The Amendment to the specification and abstract filed on 09/29/2005 has been accepted by the examiner.

#### **Remark on the applicant definition of 'ameliorating'**

- 2 Applicant response on 09/29/2005 have indicated that 'ameliorating' means 'reduces'; Since the examiners can not find a support for this definition in the specification, the examiner uses the plain meaning of 'ameliorating' which is found in Merriam-Webster's dictionary Tenth edition, 1993, which means 'to make better or more tolerable' for this office action. (see *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

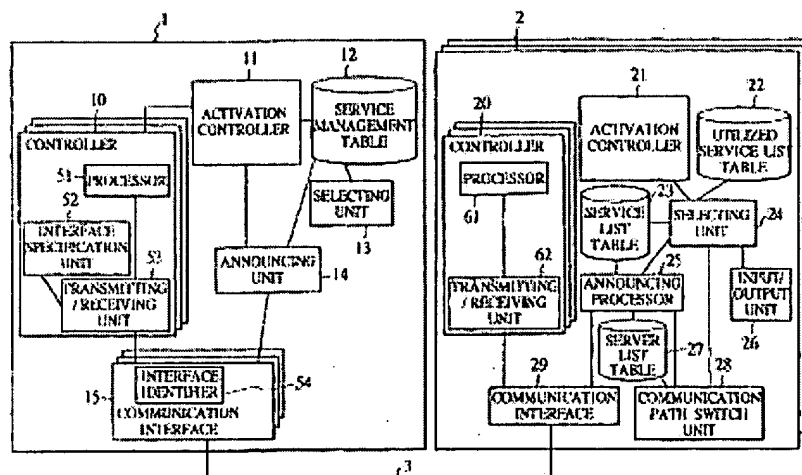
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 8, 5, 6, 10, 11, 12 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Kurashima et al. (U.S. Patent 6,694,350).

Regarding claim 1:

Kurashima discloses a method for determining a dependency between a first and a second system resource performance characteristic in a computing system (abstract), comprising the steps of: providing data values for the first performance characteristic and the second performance characteristic of the computing system (Col. 1-2, Lines 29-53, Col. 3-4, Lines 17-11, fig. 9); applying a mathematical algorithm to derive a correlation value between said first and second characteristics (fig. 9), and providing said correlation value between the range of '0' and '1' to indicate the relative dependence between said second characteristic and said first characteristic (fig. 9, fig. 1, unit 12, 10).

FIG. 1



Regarding claim 8:

Kurashima discloses a method of ameliorating the need to monitor multiple system characteristics of a given computing system by determining a subset of performance characteristics which particularly impact on the performance of said

given computing system (abstract), comprising the steps of, providing data values for a first performance characteristic and a second performance characteristic of the computing system (Col. 1-2, Lines 29-53, Col. 3-4, Lines 17-11, fig. 9); and applying a mathematical algorithm to derive a correlation value between said first and second characteristics (fig. 9), wherein said correlation value provides an indication of the relative dependency between the second characteristic and said first characteristic (fig. 9).

FIG. 11

SERVICE INFORMATION	
PACKET TYPE	3
NUMBER OF SERVICES	
SERVICE NUMBER	1
SERVICE TYPE	INDIVIDUAL
NAME	MAP GUIDE
COMMUNICATION PARAMETER	version=1.0
SERVICE NUMBER	2
SERVICE TYPE	BROADCAST
NAME	WEATHER FORECAST
COMMUNICATION PARAMETER	multicast=239.254.0.1
SERVICE NUMBER	3
SERVICE TYPE	BROADCAST
NAME	MISSING INFORMATION
COMMUNICATION PARAMETER	multicast=239.254.0.2

Regarding claim 5, Kurashima discloses a computer program loaded on a computer system (fig. 1, unit 12); Regarding claim 6, Kurashima discloses a computer readable medium (fig. 1, unit 12); Regarding claim 10, Kurashima discloses providing data values for a plurality of said second performance

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characteristics, and applying said mathematical algorithm to derive a correlation value between each one of said first performance characteristics and said plurality of second characteristics (Col. 1-2, Lines 29-53, Col. 3-4, Lines 17-11, fig. 9); Regarding claim 11, Kurashima discloses ranking (fig. 11, service number) of the first and second performance to the relative dependency (fig. 9); Regarding claim 12, Kurashima discloses hardware characteristic of computer system (fig. 9); Regarding claim 13, Kurashima discloses software characteristic of computer system (fig. 12, 9).

FIG. 9

PACKET TYPE		COMMUNICATION PATH INFORMATION	
REPEAT FOR NUMBER OF COMMUNICATION PATHS	NUMBER OF COMMUNICATION PATHS		2
	COMMUNICATION PATH IDENTIFIER		23311
	DITTO		29324

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- a. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kurashima et al. (U.S. Patent 6,694,350) in view of Mason, 114 USPQ 127, 44 CCPA 937 (1957).

Regarding claim 7:

Kurashima discloses a method of analyzing a computer system to determine the cause of an intermittent system overload (abstract), comprising the steps of, providing data values for a first performance characteristic and a second performance characteristic of the computing system (Col. 1-2, Lines 29-53, Col. 3-4, Lines 17-11, fig. 9); and applying a mathematical algorithm to derive a correlation value between said first and second performance characteristics (fig. 9), and providing said correlation value to indicate the relative dependency between said second performance characteristic and said first performance characteristic said correlation value being set in fractional value between '0' and '1' (fig. 9, fig. 1, unit 12, 10).

Kurashima does not disclose whereby the degree of dependency is indicated by higher levels of fractional value. But In re Mason, 114 USPQ 127, 44 CCPA 937 (1957) has been held that the functional "whereby" statement does not define any structure and accordingly can not serve to distinguish.

- b. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kurashima et al. (U.S. Patent 6,694,350) in view of Inman et al. (U.S. Patent Application Publication 2003/0096606)

Kurashima discloses a method including the subject matter discussed above except use of a pearson correlation coefficient equation, Inman discloses the use of a pearson correlation coefficient equation (page 5, section 0045), in order to minimizes the probability of error and reduces the number of false conclusions (page 1, section 0009).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kurashima to have the use of a pearson correlation coefficient equation taught by Inman in order to minimize the probability of error and reduce the number of false conclusions.

***Allowable Subject Matter***

5. Claims 3, 4, and 9 are allowed.

***Reasons for Allowance***

6. The following is an examiner's statement of reasons for allowance:

Independent claims 3, 4 and 9 contain allowable subject matter. None of the prior art of record shows or fairly suggests the claimed invention.

Regarding claim 3:

The primary reason for the allowance of claim 3 is the inclusion of the method of determining the probable cause of sub-optimal performance in a computer system including the first and second performance characteristic are highly dependent on one another while the lower values indicate that the first and second performance characteristic have lesser influence on one another. It is these features found in the claim, as they are claimed in the combination, that has not been found, taught or suggested by the prior art of record which makes this claim allowable over the prior art.

Regarding claim 4



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The primary reason for the allowance of claim 4 is a system analyzing a computer system including the first and second performance characteristic where higher numerical values of correlation value indicates a greater dependency between the first and second characteristic. It is these features found in the claim, as they are claimed in the combination, that has not been found, taught or suggested by the prior art of record which makes this claim allowable over the prior art.

Regarding claim 9:

The primary reason for the allowance of claim 9 is the inclusion of the method of analyzing a computer system including between the first and the second characteristic relative dependency increasing according to the higher value of the numerical indication. It is these features found in the claim, as they are claimed in the combination, that has not been found, taught or suggested by the prior art of record which makes this claim allowable over the

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Response to Arguments***

7. Applicant's arguments with respect to the amended claims have been considered but are moot in view of the new ground(s) of rejection. However, applicant's arguments filed 09/29/2005 have been fully considered but they are not persuasive.

A. Applicant argues that the prior art does not show the 'determining a dependency between first and second performance characteristic by calculating a correlation value utilizing a mathematical algorithm', Kurashima discloses 'determining a dependency between first and second performance characteristic by calculating a correlation value utilizing a mathematical algorithm' in Col. 1-2, Lines 29-53, Col. 3-4, Lines 17-11 and fig. 9.

B. Applicant argues that the prior art 'deals with different problem entirely' in claim 2. The examiner disagree because both Kurashima and Inman deal with the similar problem in the same area (solving communication network traffic path problem). *Remind the applicant that the factual inquiries set forth in Graharn v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:*

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Kurashima and Inman are analogous art because they are from the same field of endeavor, that is solving communication network traffic path problem.

### Conclusion


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung S Lau whose telephone number is 571-272-2274. The examiner can normally be reached on M-F 9-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 571-272-2269. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TL

  
MICHAEL NGHIEM  
PRIMARY EXAMINER